

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link Up)	WC Docket No. 03-109
)	

**REPLY COMMENTS OF
TOTAL CALL INTERNATIONAL, INC.**

Total Call International, Inc. (“TCI”), by its attorneys, hereby submits these reply comments in the above-captioned proceedings.¹ TCI agrees with the Prepaid Card Providers² that the Commission should expeditiously rule that prepaid calling card providers purchasing a CLEC’s local DID numbers are not subject to a third party LEC’s originating access charges.

¹ In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link Up, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb. 9, 2011).

² Comments of Cinco Telecom Corp., iBasis Retail, Inc. IDT Telecom, Inc. and STi Prepaid, LLC, WC Docket No. 10-90, *et al.*, filed Apr. 18, 2011 (“Prepaid Card Provider Comments”).

AT&T's attempts to strong-arm prepaid card providers and usurp the Commission's authority have cast a shadow over a successful means of bringing economical telephone services to low income, elderly and immigrant populations in the United States. To remove this uncertainty and to promote the orderly transition to a new intercarrier compensation regime, the Commission should rule that, under current intercarrier compensation rules, such calls are subject to reciprocal compensation arrangements between the CLEC and third party LEC.

ARGUMENT

TCI is a provider of prepaid calling card services. TCI offers a number of prepaid calling cards designed to be the most affordable way to make international calls for an important segment of the telecommunications market. As with many other prepaid card providers, TCI sells its cards exclusively through retail distribution outlets such as convenience stores, gas stations and ethnic markets. This retail distribution chain reaches low income and immigrant communities that often do not have access to affordable telephone services through traditional post-paid alternatives. The value of prepaid cards to consumers is evidenced by the fact that, according to the FCC's most recent monitoring data, prepaid card service revenue exceeded \$3.4 billion in 2008, 7.2% of total U.S. toll service revenue in 2008.³

The success of this segment of the toll service industry is threatened by AT&T's strong-arm tactics. In 2009, AT&T began sending threatening letters to prepaid card providers asserting that the providers owed AT&T's local exchange carriers access charges for calls originated through local numbers obtained from CLECs. TCI is among the providers that AT&T targeted with its letters. Upon information and belief, AT&T threatened approximately 15

³ Universal Service Monitoring Report 2010 (Data Received Through October 2010), CC Docket No 98-202, Prepared by the Federal and State Staff for the Federal-State Joint Board on Universal Service in CC Docket No. 96-45, at 1-23 (Table 1.6) (Dec. 2010).

prepaid card providers with litigation to collect access charges on previously completed traffic. AT&T brought suit against three providers already, with the possibility of litigation looming against the rest.⁴ In a market with low entry barriers, AT&T's litigation tactics raise the potential that TCI and the other targeted prepaid card providers will face disparate costs and expenses, should AT&T prevail on its theory. Already, the threat of litigation has imposed defense costs on TCI and created uncertainty regarding TCI's ultimate costs in providing prepaid card services. This uncertainty has, in turn, hindered TCI's ability to respond to market pressures from other carriers because TCI cannot predict the costs it will face in originating calls. TCI agrees with the Prepaid Card Providers that the Commission should now resolve the question of whether access charges apply to these calls.

On the merits, TCI strongly disagrees with the assertions of AT&T that the Commission applied access charges to these calls in its *2006 Order* classifying IP-based and menu-driven prepaid calling cards.⁵ As the Prepaid Card Providers noted, the 2006 Order expressly addressed only calls originated by dialing 8YY numbers.⁶ The Commission did not address whether or how Part 69 applied to locally dialed calls. AT&T's misleading quotations to the contrary, the Commission did not address the locally dialed scenario, which involves both a different dialing method and different carrier arrangements than menu-driven and IP-based cards.

⁴ See Prepaid Card Provider Comments at 11-12.

⁵ Comments of AT&T, Inc., WC Docket No. 10-90, *et al.*, at 36, 38 (filed Apr. 1, 2011) ("AT&T Comments"); see *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Declaratory Ruling and Report and Order, 21 FCC Rcd 7290 (2006) ("2006 Order").

⁶ See Prepaid Card Provider Comments, at 6-8.

The FCC's failure to address locally dialed calls prompted one LEC, Arizona Dialtone Inc., to file a petition for reconsideration of the *2006 Order*.⁷ Arizona Dialtone's petition asked the precise question that AT&T claims was answered – whether LEC access charges apply to prepaid card calls that are originated through local numbers assigned by a competing CLEC. The Arizona Dialtone petition remains pending today, and TCI agrees with commenters that ask the Commission to resolve that petition now.

TCI further agrees with the Prepaid Card Providers that the Commission should deny Arizona Dialtone's petition. There is no dispute that Section 251(b)(5) governs the exchange of telecommunications traffic between an ILEC and a CLEC, unless the arrangement was a pre-1996 Act obligation, which is preserved by Section 251(g). Given AT&T's complete failure to cite to any provisions in its interstate switched access tariffs that apply when a CLEC receives a local call and hands it off to a third party, there is not even a colorable argument that locally dialed prepaid card calls have been governed by pre-1996 Act arrangements. If they were, AT&T certainly would be able to identify the specific tariff provisions that apply. Moreover, the routing arrangement at issue could not even have existed prior to the 1996 Act. Prior to the 1996 Act, CLECs did not interconnect with ILECs for the exchange of local calls, and no CLEC could offer the local DID product that they offer to prepaid card providers today.

The Commission previously rejected similar ILEC attempts to apply access charges to new arrangements brought upon by the 1996 Act. In the *Virginia Arbitration* proceeding, the Commission was faced with a question about “how to determine whether a call passing between [ILEC and CLEC] networks is subject to reciprocal compensation (traditionally

⁷ See Arizona Dialtone Inc. Petition for Reconsideration, *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68 (filed August 31, 2006).

referred to as ‘local’) or access charges (traditionally referred to as ‘toll’).”⁸ In that instance, the issue involved virtual foreign exchange service, which, like the CLEC DID service here, was a new arrangement created with the advent of local competition.

The ILEC in the *Virginia Arbitration* case contended that CLEC virtual foreign exchange service “thwarted” its access charges, and contended that Section 251(g) mandated that the CLEC pay access charges for calls exchanged through the arrangement.⁹ Ironically, one of the CLECs opposing this argument was AT&T. AT&T noted that virtual foreign exchange arrangements were new creations, and that no pre-existing rules applied to this new category of traffic.¹⁰ AT&T contended instead that reciprocal compensation applied to the traffic pursuant to Section 251(b)(5).

The Commission agreed with AT&T’s view in the *Virginia Arbitration*. It accepted the CLEC petitioners’ proposed language, which applied reciprocal compensation arrangements under section 251(b)(5) to the traffic at issue.¹¹ The Commission found persuasive both that carriers typically rated calls based on the NPA-NXX of the calling and called parties, and that the ILEC offered no viable alternative to applying reciprocal compensation to the exchange of calls with local numbers.¹² The same considerations apply to locally dialed prepaid card calls. Carriers typically rate these calls as local – based on the local NPA-NXXs assigned to them – and there is no viable way to distinguish these calls from other local calls exchanged over

⁸ *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, Memorandum Opinion and Order, 17 FCC Rcd 27039, 27126 (Wireline Comp. Bur. 2002) (“Virginia Arbitration Order”).

⁹ Virginia Arbitration Order, 17 FCC Rcd at 27181.

¹⁰ Virginia Arbitration Order, 17 FCC Rcd at 27177.

¹¹ See Virginia Arbitration Order, 17 FCC Rcd at 27181.

¹² Virginia Arbitration Order, 17 FCC Rcd at 27181-82.

the same telecommunications trunks. Therefore, just as the Commission ruled in the *Virginia Arbitration*, it should rule here that reciprocal compensation applies to locally dialed prepaid card calls.

Ultimately, the Commission has the sole jurisdiction to determine what compensation requirements, if any, should apply to locally dialed prepaid calls. Failure to act at all risks ceding the Commission's policy-making authority to the courts, and primarily to a single court in Texas chosen by AT&T. TCI agrees with the Prepaid Card Providers that the Commission is the appropriate body to resolve this question, not the courts.

TCI also agrees with the Prepaid Card Providers that the reciprocal compensation regime offers the most efficient solution consistent with the Commission's goals in access reform.¹³ Commenters in this proceeding are united in their assessment that the Part 69 access charge regime requires fundamental reforms. Given this agreement, TCI respectfully submits that it would be contrary to the public interest to subject a thriving market segment representing 7% of total toll revenues to these charges now. Such an outcome would penalize prepaid card providers, undermine the benefits of innovative CLEC services and generate expensive and time-consuming litigation during the last gasp of a failed regime.

¹³ See Prepaid Card Provider Comments at 23-24.

The Commission, therefore, should reclaim its authority to decide the question, deny the Arizona Dialtone petition and rule that locally dialed calls routed to CLECs are subject to Section 251(b)(5)'s reciprocal compensation arrangements.

Respectfully submitted,

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